

“O”

1  
2  
3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10 EASTERN DIVISION

11 RONALD CROUCH, ) Case No. EDCV 06-00738 AN  
12 Plaintiff, )  
13 vs. ) MEMORANDUM AND ORDER RE  
14 ) PLAINTIFF’S MOTION FOR EAJA  
15 MICHAEL J. ASTRUE, ) FEES  
16 Commissioner of Social Security, )  
17 Defendant. )

18 **I. BACKGROUND**

19 Plaintiff’s Counsel, Bill La Tour, has filed a motion for attorney’s fees (“Motion”)  
20 (docket no. 16) pursuant to the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412,  
21 and the Commissioner has filed his Opposition to the Motion (“Opposition”) (docket no.  
22 17). No Reply was filed. Counsel seeks EAJA fees in the total amount of \$2,552.65  
23 (Motion at 3).

24 **II. DISCUSSION**

25 Under the EAJA, a prevailing claimant is entitled to recover reasonable attorney  
26 fees unless the government meets its burden of demonstrating that its position in the  
27 litigation was “substantially justified,” or that “special circumstances make an award  
28 unjust.” 28 U.S.C. § 2412(d)(1)(A); *Sampson v. Chater*, 103 F.3d 918, 921 (9th Cir.

1996). The government's position must be substantially justified at each stage of the proceedings. *Corbin v. Apfel*, 149 F.3d 1051, 1053 (9th Cir. 1998). Whether the government's position was substantially justified is determined under a reasonableness standard – whether the government's position had a reasonable basis in both law and fact. *Pierce v Underwood*, 487 U.S. 552, 565, 108 S.Ct. 2541 (1988); *Flores v. Shalala*, 49 F.3d 562, 569-570 (9th Cir. 1995).

In his Opposition, the Commissioner does not contend that his position was substantially justified or that special circumstances make an award unjust. Instead, he simply challenges the amount of the fees requested. Accordingly, the Court will proceed with determining what amount of EAJA fees are reasonable and should be awarded.

### 1. Hourly Rates

The \$125 hourly rate for attorneys that is statutorily authorized under 28 U.S.C. § 2412(d)(2)(A)(ii) may be adjusted upward to reflect a cost-of-living adjustment (“COLA”) due to inflation. *Patterson v. Apfel*, 99 F.Supp. 2d 1212, 1215 (C.D. Cal. 2000). The COLA for the year in which the fees were earned is calculated using a formula that is based upon the Consumer Price Index<sup>1/</sup> (the “CPI”). *Sorensen v. Mink*, 239 F.3d 1140, 1149 (9th Cir. 2001). Counsel did not include a current copy of the CPI, commonly attached to such motions to justify an increase in the statutory rate.<sup>2/</sup>

The Motion reflects that Counsel seeks fees for services that were rendered for the calendar years of 2006, and 2007, respectively, and that the amount of requested fees for attorney services is \$2,552.65, representing 16.75 hours of work before the Court,

---

<sup>1/</sup>

The CPI is published on a monthly basis, with a multiplier for each month, as well as an annualized multiplier for each year. The CPI is used to adjust rates and account for changes in the cost of living.

<sup>2/</sup>

The Court will use the “Consumer Price Index- All Urban Consumers, U.S. City Average, All Items” which is available through the [www.bls.gov](http://www.bls.gov) website.

1 calculated as follows: 12 hours of attorney time in December, 2006 at \$167.20 per hour  
2 ( $12 \times \$167.20 = 2006.40$ ), and 4.75 hours of paralegal time at \$115.00 per hour ( $4.75 \times$   
3  $\$115.00 = \$546.25$ ) in the years 2006 and 2007.

4 “[T]he EAJA set a maximum fee of \$75 per hour, which was increased by  
5 amendment in 1996 to \$125 per hour for cases commenced on or after March 29, 1996.  
6 District courts have been determining the cost-of-living adjustment by multiplying the  
7 basic EAJA rate by the current consumer price index for urban consumers (CPI-U), and  
8 then dividing the product by the CPI-U in the month that the cap was imposed (October  
9 1981 for pre-amendment cases, March 1996 for post-amendment cases).” *Id.* at 1148.  
10 Further, a party seeking EAJA attorney’s fees with a cost-of-living adjustment must  
11 utilize the adjustment pertinent to the year in which the work was actually performed.  
12 *Id.* at 1149. Therefore, the Court must consider rates based upon CPI-adjusted hourly  
13 rates of \$162.01(December, 2006) for attorney services provided. The proper formula  
14 to calculate the CPI-adjusted hourly rates for the year in question begins with the  
15 statutory EAJA fee amount set in March 1996. The \$125 statutory amount is then  
16 adjusted according to the following formula: \$125 per hour (where \$125 reflects the  
17 current statutory amount for fees) x service year CPI-U (where \$201.80 equals the CPI-U  
18 of December 2006)/155.7 (where 155.7 equals the CPI-U of March 1996). Therefore, the  
19 Court finds the adjusted hourly rate for attorney services in 2006 is  $\$162.01(125 \times$   
20  $201.8/155.7)$ .

21 Plaintiff also seeks EAJA fees for 4.75 hours of paralegal time at an hourly rate of  
22 \$115.00. (Petition at 2.) The Court does not find the hourly rate sought for paralegal  
23 time is appropriate. The language of § 2412(d)(2)(A) indicates that the general rule for  
24 awarding fees is that they are to be “based on the prevailing market rates for the kind and  
25 quality of services furnished,” and that a COLA is only available for attorneys fees under  
26 § 2412(d)(2)(A)(ii) where the COLA justifies an award that exceeds the \$75 per hour  
27 statutory cap. Thus, although the EAJA allows for the recovery of paralegal fees for  
28 paralegals whose “prevailing market rate” is less than \$75.00 per hour, neither the cap on

1 those fees nor the fees themselves may be augmented by a COLA. Therefore, the Court  
2 denies Plaintiff's request that paralegal services be calculated at a CPI-adjusted hourly  
3 rate of \$115.00, and that the hourly rate for paralegal services will be fixed at \$75.00.

## 4 **2. Amount of Time**

5 Fee shifting statutes like the EAJA encourage competent, experienced attorneys  
6 to accept cases that they otherwise would not by assuring recovery of a reasonable fee.  
7 However, a reasonable fee should be awarded based upon factors that include, but are not  
8 limited to, the complexity of the case or the novelty of the issues, and the attorney's  
9 expertise and skill. *Kerr v. Screen Extras Guild, Inc.* 526 F.2d 67, 69-70 (9th Cir. 1975).  
10 The amount of time reasonably billed for social security appeals varies depending on the  
11 complexity of the case, the experience of counsel, and the disposition of the appeal. *See*  
12 *Widrig v. Apfel*, 140 F.3d 1207, 1209 (9th Cir. 1998) (concluding that the district court  
13 did not abuse its discretion in reducing an award of attorney's fees in a social security  
14 appeal by considering *Kerr* factors and the attorney's insufficient support for his claimed  
15 hourly rate).

16 The Court finds that 6.0 of the 12.00 hours of attorney time is unreasonable and  
17 excessive for the reasons stated in the Opposition. Therefore, the December, 2006  
18 attorney time is reduced to 6.00 hours, which the Court finds to be the reasonable amount  
19 of time that an experienced social security practitioner such as Plaintiff's Counsel should  
20 have taken. Likewise, the Court finds 2.75 of the 4.75 hours of paralegal time was  
21 excessive for the reasons stated in the Opposition. Therefore, the paralegal time is  
22 reduced to 2.00 hours, which the Court finds is the reasonable amount of paralegal time.

## 23 **3. Amount Awarded**

24 Based upon the foregoing, Counsel is awarded EAJA fees for attorney services  
25 calculated as follows:  
26  
27  
28

<b>EAJA FEES - Attorney Time</b>			
Year	CPU ADJ. Rate	Hours	Fee Amt. (\$)
2006	162.01	6	972.06
Total		6	972.06

<b>EAJA FEES - Paralegal Time</b>			
Year	Cap	Hours	Fee Amt. (\$)
2006	75.00	.5	37.50
2007	75.00	1.5	112.50
Total		2	150

<b>EAJA FEES - TOTAL</b>			
Time	Amount	Hours	Fee Amt. (\$)
Attorney	162.01	6	972.06
Paralegal	75.00	2	150.00
Total		8	1122.06

The total EAJA fees awarded to Counsel is \$1,122.06.

### **III. CONCLUSION**

For the reasons discussed above, Counsel's Motion is granted in part, and Counsel is awarded total EAJA fees of \$1,122.06.

IT IS SO ORDERED.

DATED: November 12, 2008

\_\_\_\_\_  
/s/ Arthur Nakazato  
ARTHUR NAKAZATO  
UNITED STATES MAGISTRATE JUDGE